

AMENDED IN ASSEMBLY MAY 6, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 698

**Introduced by Assembly Member Lieber
(Coauthors: Assembly Members Jackson and Pavley)**

February 19, 2003

An act to add Chapter 6.93 (commencing with Section 25430) to Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 698, as amended, Lieber. PCE: claims: liability.

Existing law requires hazardous waste facilities to operate under hazardous waste facilities permits issued by the Department of Toxic Substances Control. The department is required to adopt regulations for series A, B, and C standardized permits for offsite non-RCRA hazardous waste treatment or storage facilities. Existing law provides that an offsite facility treating solvents is eligible for a standardized permit if, among other things, the facility exclusively treats solvent wastes and the wastes that the facility treats are only the types of solvents generated from dry cleaning operations.

This bill would enact the California PCE Environmental Cost Recovery Act and would require the owner or operator of a dry cleaning facility or abandoned dry cleaning facility that is currently conducting or intends to conduct dry cleaning operations, and each wholesale distributor of PCE, to register the facility with the board, and to pay an

annual registration fee of \$1,500. The bill would authorize a current or prior owner or operator of an abandoned dry cleaning facility or property to register the facility or property site and pay a fee.

The bill would also require each person or business that sells PCE in this state to pay a fee of \$10 for each gallon of PCE purchased by a dry cleaning facility. The bill would authorize the board, on and after January 1, 2006, to annually adjust the registration fees and sales to ensure viability of the fund. The bill would prohibit a person, after January 1, 2005, from selling or transferring ~~any~~ dry cleaning solvent to a person owning or operating a dry cleaning facility unless the owner or operator of the dry cleaning facility has a certificate of registration.

The bill would require all registration fees and PCE sales fees to be deposited in the PCE (Tetrachloroethelyne) Cost Recovery Fund, which this bill would create in the State Treasury. The bill would also require all money appropriated by the Legislature, corrective action costs recovered by the board, gifts, grants, and donations, federal funds and interest earned be deposited in the fund.

The bill would authorize the board to expend the money in the PCE Cost Recovery Fund, upon appropriation by the Legislature, for taking specified actions with respect to a PCE release from a dry cleaning facility or abandoned dry cleaning facility or wholesale distribution facility, including the reasonable and necessary costs expended by the board with respect to a PCE release, enforcement activities, and for administrative expenses related to carrying out the act. The board would also be authorized to expend the money in the fund to pay claims to potentially eligible parties for the reimbursement of necessary corrective action costs incurred by the claimant with regard to a PCE release.

The bill would provide that an owner or operator of a dry cleaning facility or wholesale distribution facility from which there is a PCE release or threatened release is liable for the full costs of any required corrective action or replacement costs, or any corrective action order, directive, notification or approval order issued pursuant to the Porter-Cologne Water Quality Control Act, with regard to that PCE release.

The bill would authorize a potentially eligible party, as defined, to file a claim with the board for specified reimbursement *of* corrective action costs and water supply replacement costs with regard to a PCE release at a dry cleaning facility. The bill would require the board to



review and approve or deny an application for a claim, as specified, and to adopt and annually revise a priority ranking list for awarding claims.

The bill would require the board to adopt regulations to implement the act and would prohibit the Office of Administrative Law from repealing any emergency regulations filed with the Office of Administrative Law on or before January 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.93 (commencing with Section 25430) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.93. CALIFORNIA PCE ENVIRONMENTAL COST
RECOVERY ACT

Article 1. Title and Legislative Intent

25430. (a) This chapter shall be known and may be cited as the “California PCE Environmental Cost Recovery Act.”

(b) The Legislature hereby finds and declares all of the following:

(1) In order to help ensure an efficient PCE Cost Recovery Fund to provide response for releases of PCE related to dry cleaning operations, including spills and disposal that pose a threat to the public health or the environment ~~and that provides, and to provide~~ for the rapid distribution of cleanup funds that will assist the state’s recovery, it is in the best interest of the public that the State Water Resources Control Board devote maximum effort to the expedited processing and payment of all claims filed pursuant to Section 25465.

~~(2) It is estimated that approximately _____s of former and existing dry cleaning facilities exist in the state.~~

~~(3) —~~

(2) Although the exact extent of the problem is unknown, it is thought that a significant number of dry cleaning facilities in the state have released PCE contamination that poses a threat to the environment and human health and safety. Over 900 public

1 drinking water wells and dozens of communities have been
2 affected by PCE releases from dry cleaning facilities and possibly
3 other PCE use facilities. Property transactions and land
4 redevelopment have been significantly hampered by discovery of
5 PCE contamination at current and abandoned dry cleaning
6 facilities. Emergency funds and general funds have been
7 insufficient to pay for water replacement costs in the hardest hit
8 communities.

9 ~~(4)~~

10 (3) In recent years, owners or operators of existing or
11 abandoned dry cleaning facilities and contaminated properties
12 have been unable to obtain sufficient financial resources to pay for
13 corrective action or replacement of drinking water sources.

14 ~~(5)~~

15 (4) There are long-term threats to public health and water
16 quality if a comprehensive, uniform, and efficient funding
17 program is not established to assist in meeting corrective action
18 requirements.

19 ~~(6)~~

20 (5) It is in the best interest of the health and safety of the people
21 of the state to establish a fund to pay for corrective action and
22 drinking water replacement costs if insurance coverage or other
23 financial means are not available.

24 ~~(7)~~

25 (6) An efficient program of establishing corrective action
26 reimbursement funds should encourage corrective action to be
27 taken by the owner or operator of a contaminated dry cleaning
28 facility or abandoned dry cleaning facility.

29 ~~(8)~~

30 (7) It is in the public interest for the state to provide financial
31 assistance to small businesses that have limited financial
32 resources, to ensure the adequate protection of groundwater and
33 public health.

34 (c) Nothing in this chapter shall be construed as waiving any
35 immunity provided the state or its departments and agencies by the
36 United States Constitution.

37



Article 2. Definitions

25431. Unless the context indicates otherwise, the definitions specified in this article govern the construction of this chapter.

25431.5. “Abandoned dry cleaning facility” means any real property premises or individual leasehold space on which a dry cleaning facility formerly operated.

25432. “Claim” and “application” means an application to the board for the reimbursement of the costs of taking corrective action for a PCE release from an existing or abandoned dry cleaning facility.

25432.1. “Claimant” means a potential eligible party who has a claim approved by the board.

25432.5. “Corrective action” has the same meaning as defined in Section 25299.14, but only with respect to a release of PCE.

25433. “Dry cleaning facility or abandoned dry cleaning facility” means a current or abandoned commercial facility located in this state that is or was engaged in onsite dry cleaning operations, other than one of the following:

(a) A coin-operated dry cleaning operation.

(b) A facility located on a United States military base or owned by the United States, or ~~any~~ *by a* state or local agency.

(c) A commercial uniform service ~~and/or linen supply facility~~ *or linen supply facility or both*.

25433.5. “Dry cleaning operations” means cleaning of apparel and household fabrics, using one or more dry cleaning solvents, including, but not limited to, those businesses described in Standard Industrial Classification (SIC) Code No. 7216.

25434. “Dry cleaning solvent” or “solvent” means ~~any~~ *a* nonaqueous solvent or product used, or intended for use, in the cleaning of garments and other fabrics at a dry cleaning facility, including, but not limited to, ~~all of~~ the following:

(a) Dense nonaqueous solvents, including, but *not* limited to, ~~such~~ chlorinated solvents *such* as PCE.

(b) Light nonaqueous solvents, including, but not limited to, ~~such~~ petroleum-based solvents *such* as Stoddard Solvent.

(c) The products into which all the solvents or products specified in subdivisions (a) or (b) degrade.

1 25434.5. “Federal act” means the Comprehensive
2 Environmental Response, Compensation, and Liability Act of
3 1980, as amended (42 U.S.C. Sec. 9601 et seq.).
4 25435. “Fund” means the PCE (Tetrachloroethelyne) Cost
5 Recovery Fund created pursuant to Section 25440.
6 25435.5. “Operator” means ~~any~~ a person responsible for the
7 operation of a dry cleaning facility or in-state wholesale
8 distribution facility or that has an ownership interest in a dry
9 cleaning operation or wholesale distributor.
10 25436. “Operation,” with respect to a dry cleaning facility,
11 means ~~maintaining~~ maintenance or management.
12 25436.5. “Owner,” with respect to a dry cleaning facility,
13 means ~~to own~~ a person who owns part or all of the real property
14 of the facility.
15 25437. “PCE” means tetrachloroethelyne or
16 perchloroethelyne.
17 25438. “Person” means an individual, trust, firm, joint stock
18 company, business concern, corporation, including, but not
19 limited to, a government corporation, partnership, limited liability
20 company, and association. “Person” also includes ~~any~~ a city,
21 county, city and county, district, commission, the state or ~~any~~ a
22 political subdivision thereof, ~~any~~ an interstate body, and the
23 United States and its agencies and instrumentalities, to the extent
24 permitted by law.
25 25438.5. “Potentially eligible party” or “party” means
26 either of the following:
27 (a) The owner or operator of an active dry cleaning facility,
28 abandoned dry cleaning facility, or wholesale distribution facility.
29 (b) The prior owner or operator of an abandoned dry cleaning
30 facility.
31 25439. “Release” means ~~any~~ spilling, leaking, pumping,
32 pouring, emitting, emptying, discharging, injecting, escaping,
33 leaching, dumping, or disposing ~~of~~ PCE into the environment.
34 25439.1. “Site” means ~~any~~ an area, location, or facility
35 where PCE has been released into the environment.
36 25439.2. “Wholesale distributor” means a person or
37 company whose primary business is selling dry cleaning solvents
38 and supplies to in-state or out-of-state dry cleaning facilities. For
39 purposes of this section, “primary business,” means that the
40 percentage of the person’s or company’s gross receipts from the

1 sale of dry cleaning solvents and supplies to the dry cleaning
2 facilities equals or exceeds 20 percent of total gross receipts.

3 25439.6. “Wholesale distribution facility” means a facility
4 or location where a wholesale distributor’s operations are located
5 and that is used for the storage or handling of dry cleaning solvents
6 and supplies.

7 25439.7. For purposes of this chapter, “board,” “regional
8 board,” and “local agency” have the same meanings as defined
9 in Section 25281. Any other term used in this chapter that is not
10 defined by this article has the same meaning as defined in Section
11 25281.

12
13 Article 3. PCE (Tetrachloroethelyne) Cost Recovery Fund
14

15 25440. (a) The PCE (Tetrachloroethelyne) Cost Recovery
16 Fund is hereby established in the State Treasury, and the money in
17 the fund may be expended by the board, upon appropriation by the
18 Legislature, for the purposes specified in subdivision (c). The
19 Legislature may appropriate the money in the fund for expenditure
20 by the board, without regard to fiscal years, for taking prompt
21 action in response to ~~any~~ an unauthorized release of PCE that has
22 impacted, or reasonably will impact, the waters of the state, for
23 purposes of subdivision (c).

24 (b) All of the following amounts shall be deposited in the PCE
25 Cost Recovery Fund:

26 (1) All money recovered by the board pursuant to Section 25460
27 from an owner or operator of a dry cleaning facility or abandoned
28 dry cleaning facility.

29 (2) Fees collected pursuant to Article 4 (commencing with
30 Section 25450).

31 (3) ~~Any~~ All appropriations made by the Legislature.

32 (4) Gifts, grants, and donations intended for deposit in the fund.

33 (5) ~~Any~~ All federal funds made available under similar federal
34 legislation, or any other federal program.

35 (6) Notwithstanding Section 16475 of the Government Code,
36 all interest earned upon ~~any~~ money deposited in the PCE Cost
37 Recovery Fund.

38 (c) The board may expend the money in the PCE
39 (Tetrachloroethelyne) Cost Recovery Fund for all of the following
40 purposes:

(1) The reasonable and necessary costs expended by the board with respect to a PCE release from a dry cleaning facility or abandoned dry cleaning facility or wholesale distribution facility, including all of the following:

(A) Enforcement activities.

(B) Corrective action oversight.

(C) Cost recovery.

(D) Provision of replacement water supplies.

(E) Exposure assessments.

(2) For administrative expenses related to carrying out the activities specified in paragraph (1) and for implementing this chapter.

(3) For transfer to the State Board of Equalization for administrative costs in collecting the fee imposed by Article 4 (commencing with Section 25450).

(4) To pay claims pursuant to Section 25465 for all of the following:

(A) Reimbursement of necessary corrective action costs incurred by the claimant that are required by the regional board or local agency to protect water resources and public health and safety

(B) ~~Any water~~ *Water* supply replacement costs that are required by a California regional water quality control board.

(d) The board shall oversee expenditures required to provide administrative support and maximize the funds available for corrective action and minimize the board's administrative expenditures.

Article 4. Fees and Payments to the Fund

25450. The Legislature hereby declares that the fees imposed by this article would not result in the imposition of a tax within the meaning Article XIII A of the California Constitution, because the amount and nature of the fees have a fair and reasonable relationship to the adverse environmental burdens imposed by the sale and use of PCE and there is a sufficient nexus between the fees imposed and the use of those fees to support the funding of corrective action measures, including payment of claims for costs incurred to take corrective action, to releases of PCE.

1 25451. (a) On or before January 1, 2005, and on or before
2 each January 1 thereafter, the owner or operator of a dry cleaning
3 facility or abandoned dry cleaning facility that is currently
4 conducting, or intends to conduct for all or part of the year, dry
5 cleaning operations shall register the facility with the board.

6 (b) A current or prior owner or operator of an abandoned dry
7 cleaning facility or property may register the facility or property
8 with the board and pay a fee pursuant to subdivision (c).

9 (c) The owner or operator of a dry cleaning facility or
10 abandoned dry cleaning facility subject to subdivision (a) shall pay
11 the board an annual registration fee of one thousand five hundred
12 dollars (\$1,500) in accordance with the fee schedule adopted by
13 the board.

14 (d) The board shall adopt regulations establishing a fee
15 schedule pursuant to this article in the amount necessary to carry
16 out this article with regard to dry cleaning facilities.

17 25452. On and after January 1, 2005, each wholesale
18 distributor shall register with the board and pay an annual
19 registration fee of five thousand five hundred dollars (\$5,500) for
20 each wholesale distribution facility in the state.

21 25453. (a) Each person or business who sells PCE in this
22 state, regardless of the state or country of origin, shall pay a fee of
23 ten dollars (\$10) for each gallon of PCE purchased by a dry
24 cleaning facility.

25 (b) A person who sells PCE subject to the fee shall collect and
26 forward the fee collected to the board on a quarterly schedule
27 established by the State Board of Equalization.

28 25454. All registration fees and PCE sales fees collected
29 pursuant to this article shall be deposited in the PCE Cost Recovery
30 Fund.

31 25455. On and after January 1, 2006, the board may annually
32 adjust the registration fees and sales fee imposed by this article,
33 after providing notice and opportunity for public comment, in a
34 manner necessary and appropriate to ensure viability of the fund
35 and in furtherance of the purposes of this chapter. The board ~~shall~~
36 *may* not increase the amount of the fees imposed on an abandoned
37 dry cleaning facility in an amount greater than fees imposed on the
38 largest PCE use facility.

39 25456. On and after January 1, 2005, ~~no person shall~~ *a person*
40 *may not* sell or transfer ~~any~~ dry cleaning solvent to ~~any~~ *a* person

owning or operating a dry cleaning facility unless the owner or operator of the dry cleaning facility has conspicuously posted a copy of a valid certificate evidencing registration of the dry cleaning facility pursuant to this chapter at the facility.

Article 5. Liability and Claims

25460. (a) An owner or operator of a dry cleaning facility or abandoned dry cleaning facility or wholesale distribution facility from which there is a release or a threatened release of PCE is liable for the full and total costs of ~~any~~ *all* required corrective action or replacement costs with regard to that release, or any corrective action order, directive, notification or approval order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code with regard to that release.

(b) No indemnification, hold harmless, conveyance, or similar agreement is effective to preclude ~~any~~ liability for costs recoverable under this article.

(c) The entry of judgment against ~~any~~ *a* party to the action does not bar ~~any~~ *a* future action by the fund against ~~any~~ *a* person who is later discovered to be potentially liable for costs paid from the fund.

(d) This chapter does not affect or modify the obligations or liability of ~~any~~ *a* person under any other provision of state or federal law, including common law.

25465. (a) A potentially eligible party may file a claim with the board for reimbursement for both of the following:

(1) Reimbursement of necessary corrective action costs incurred by the potentially eligible party with regard to a PCE release at a dry cleaning facility or abandoned dry cleaning facility that are required by the regional board or local agency to protect water resources and public health and safety.

(2) ~~Any-water~~ *Water* supply replacement costs incurred by the potentially eligible party with regard to a PCE release that are required by a California regional water quality control board.

(b) A potentially eligible party shall include, in the application for a claim, evidence of payment of any applicable fee required under this chapter. If the potentially eligible party is the current or prior owner or operator of an abandoned dry cleaning facility, the party shall provide evidence that ~~party~~ *it* has elected to register and

1 pay the fee pursuant to subdivision (b) of Section 25451. The
2 board shall review and accept or deny the request for an
3 application for a claim pursuant to the regulations adopted
4 pursuant to Section 25466. The board may reject ~~any~~ a claim
5 application and deny eligibility if the board determines that the
6 applicant is in willful noncompliance with this chapter or the
7 regulations adopted pursuant to this chapter, or if continued
8 corrective action and incurred costs are not in the interest ~~of~~ of or
9 do not result in maximum benefit to the people of the state.

10 (c) The board shall adopt a priority-ranking list at least
11 annually for awarding claims pursuant to this article. *That list shall*
12 *give high priority to claims concerning sites in low-income*
13 *communities and communities of color that are disproportionately*
14 *impacted by air and water pollution.* The board shall review ~~any~~
15 claims for high priority sites and shall first expend funds necessary
16 for corrective action with regard to those sites with money
17 available from the fund.

18 (d) The board shall, upon approval of the application, inform
19 the claimant of the priority ranking of the claim.

20 25466. (a) The board shall adopt regulations to implement
21 this chapter that place a minimum cost burden on the parties,
22 including regulations that do all of the following:

23 (1) Establish a process for submitting claim applications to the
24 board, including forms for applications, methods for determining
25 eligibility for the issuance of a claim, and a process for appealing
26 the board's decisions.

27 (2) Provide standards for prioritizing claims, considering the
28 degree of risk to human health and the environment and other
29 factors that the board may deem appropriate, including, but not
30 limited to, the financial condition of the potentially eligible party.
31 *Pursuant to subdivision (c) of Section 25465, claims concerning*
32 *sites in low-income communities and communities of color that are*
33 *disproportionately impacted by air and water pollution shall*
34 *receive high priority.*

35 (b) The Office of Administrative Law shall deem the adoption
36 of ~~any regulations~~ a regulation pursuant to this section that ~~are~~ is
37 filed with the Office of Administrative Law on or before January
38 1, 2005, to be an emergency necessary for the immediate
39 preservation of the public peace, health, safety, and general
40 welfare for purposes of Section 11349.6 of the Government Code.

1 Notwithstanding Chapter 3.5 (commencing with Section 11340)
2 of Part 1 of Division 3 of Title 2 of the Government Code,
3 including subdivision (e) of Section 11346.1 of the Government
4 Code, ~~any~~ *an* emergency regulation adopted by the board pursuant
5 to this subdivision ~~shall~~ *may* not be repealed by the Office of
6 Administrative Law, and shall remain in effect until revised by the
7 board.

